

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Aiyanna Milligan	Team: Squad #6	CCRB Case #: 201704304	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sun, 05/28/2017 8:00 PM	Location of Incident: [REDACTED]	Precinct: 44	18 Mo. SOL 11/28/2018	EO SOL 11/28/2018	
Date/Time CV Reported Wed, 05/31/2017 6:40 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 05/31/2017 6:40 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Benjamin Roman	07119	[REDACTED]	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Sambrato	06414	[REDACTED]	044 PCT
2. POM Rieguy Fernandez	02281	[REDACTED]	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM Benjamin Roman	Abuse of Authority: Police Officer Benjamin Roman threatened to arrest § 87(2)(b) [REDACTED] and individuals.	[REDACTED]
B. POM Benjamin Roman	Abuse of Authority: Police Officer Benjamin Roman seized § 87(2)(b) [REDACTED] s identification card.	[REDACTED]

### Case Summary

This case is over ninety days old given that the complainant, § 87(2)(b) did not provide a verified statement until June 21, 2017.

On May 31, 2017, § 87(2)(b) filed this complaint with the Civilian Complaint Review Board via the Call Processing System on behalf of herself, and her friends, § 87(2)(b) and § 87(2)(b) (last names unknown).

On May 28, 2017, numerous individuals, including § 87(2)(b) were gathered § 87(2)(b) an apartment building in the Bronx, in observation of the Dominican Republic's Mother's Day. § 87(2)(b) was seated as she socialized and played music from her wheeled, portable speaker, which was also in front of the building.

A marked RMP with at least one officer drove past the building. PO Benjamin Roman of the 44<sup>th</sup> Precinct warned § 87(2)(b) from the RMP, to remove the speaker and lower the volume of the music. § 87(2)(b) moved the speaker into the building's waste disposal room.

At approximately 8:00 PM, PO Roman returned and this time exited the RMP along with his partners, PO Rieguy Fernandez and PO Michael Sambrato. § 87(2)(b) was still outside, this time with neighbors: § 87(2)(b) and § 87(2)(b) § 87(2)(b) the building's porter, stood nearby.

PO Roman entered the disposal room, removed the speaker and placed into the RMP. PO Roman informed her that this was due to the lack of compliance regarding the volume of the music, stated that he needed identification, and threatened to arrest § 87(2)(b) and § 87(2)(b) if no one provided a form of one (**Allegation A**). § 87(2)(b) produced her New York State Benefit identification card and gave it to PO Roman (**Allegation B**). PO Roman asked § 87(2)(b) for her name and contact information, and informed her that she would be arrested if she did not provide that information (within **Allegation A**).

PO Sambrato issued § 87(2)(b) a Criminal Court summons for Disorderly Conduct (BR 13). The officers left the scene, however PO Roman did not return § 87(2)(b)'s identification card (within **Allegation B**). § 87(2)(b) was not arrested.

There is no video footage of the incident.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) was the only cooperative victim in this case. § 87(2)(b) was offered mediation at the conclusion of her in-person interview. § 87(2)(b) stated she would think about it, but did not respond to subsequent contact attempts.
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As of August 31, 2017, there were negative results for any Notice of Claim filed by § 87(2)(b) for this incident (BR 02).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 03).

- PO Roman has been a member of the NYPD for four years and has had one other allegation pleaded against him. § 87(2)(b), § 87(2)(g) [REDACTED].

### Potential Issues

- During her interview, § 87(2)(b) [REDACTED] stated that PO Roman threatened § 87(2)(b) [REDACTED] and herself with arrest if no one provided identification. § 87(2)(b) [REDACTED] stated she did not know the surnames of the alleged victims or the building's porter. § 87(2)(b) [REDACTED] would not provide phone numbers for them and said it was likely that they would not be willing to participate in the investigation. However, § 87(2)(b) [REDACTED] stated she would inform them of her complaint and obtain their permission to pass along their contact information. § 87(2)(b) [REDACTED] did not respond to subsequent contact attempts made to her between June 27, 2017 and July 6, 2017. On June 28, 2017, CLEAR searches were performed for § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED]. The results were negative for § 87(2)(b) [REDACTED] but yielded a possible match regarding a § 87(2)(b) [REDACTED] and multiple possible matches for § 87(2)(b) [REDACTED]. On July 10, 2017, LexisNexis searches were performed for § 87(2)(b) [REDACTED], § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED]. The results yielded consistent contact information for § 87(2)(b) [REDACTED], negative results for § 87(2)(b) [REDACTED] and numerous possibilities for § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED].
- On July 12, 2017, § 87(2)(b) [REDACTED] was contacted via phone and provided a telephone statement on July 17, 2017. Following this statement, § 87(2)(b) [REDACTED] stated she did not want to participate in the investigation or to be contacted any further. § 87(2)(b) [REDACTED] refused to provide an interview or any phone numbers and last names for § 87(2)(b) [REDACTED], § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] (BR 06).
- On July 25, 2017, the CCRB Field Team visited § 87(2)(b) [REDACTED]. Attempts to locate video evidence yielded negative results. The investigators spoke with § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] neither of which witnessed the incident. Both individuals acknowledged that they knew of an § 87(2)(b) [REDACTED] but she moved approximately 3 weeks prior and neither knew her current address or surname. § 87(2)(b) [REDACTED] provided telephone numbers for § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] who was in a post-surgical rehabilitation center. § 87(2)(b) [REDACTED] confirmed that § 87(2)(b) [REDACTED] resided at § 87(2)(b) [REDACTED], but neither he nor § 87(2)(b) [REDACTED] were able to provide contact information.
- On July 27, 2017, § 87(2)(b) [REDACTED] was contacted at the phone number obtained during the fieldwork. § 87(2)(b) [REDACTED] confirmed that he resides at § 87(2)(b) [REDACTED] and is employed as § 87(2)(b) [REDACTED], however was unfamiliar with the details of the incident. On that same day, a female individual was reached at the phone number obtained during the fieldwork for § 87(2)(b) [REDACTED] however it was the wrong number and she terminated the phone call.

### Findings and Recommendations

#### Allegations not pleaded

- **Force:** § 87(2)(b) [REDACTED] alleged that PO Roman pushed past her, § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] as he instructed them to move back and not touch him. It should be noted that § 87(2)(b) [REDACTED] did not corroborate this allegation. According to § 87(2)(b) [REDACTED] no one touched PO Roman and she did not see PO Roman touch any civilians. Given that, physical force allegations are not being pleaded because these actions did not rise to the level of misconduct.
- **Abuse of Authority:** § 87(2)(b) [REDACTED] alleged that PO Roman seized her speaker/sound reproduction device from the incident location. A seizure of property allegation is not being

pleaded for this because § 87(2)(b) was issued a Criminal Court Summons for Disorderly Conduct - Unreasonable Noise. As noted in the memo book of PO Sambrato, the summoning officer, the speaker was vouchered as arrest evidence in regards to the summons (BR 14). A Property Clerk Invoice, prepared on the incident date, reiterates the speaker's property category (BR 15).

**Allegation A - Abuse of Authority: Police Officer Benjamin Roman threatened to arrest § 87(2)(b) and individuals.**

It is undisputed that music was playing outside of § 87(2)(b) in the Bronx and PO Roman warned civilians to relocate or lower the volume of the music prior to returning to the incident location. It is also undisputed that § 87(2)(b) did not immediately provide a form of identification.

§ 87(2)(b) who provided an in-person statement on June 21, 2017, testified that she purchased a portable speaker on May 28, 2017 and had been playing music from it outside of § 87(2)(b) from, at least, 1:00 PM. It was around that time that PO Roman initially warned § 87(2)(b) via the PA system of an RMP, to remove the speaker and lower its volume. § 87(2)(b) complied and relocated her speaker to the building's waste disposal room. At approximately 8:00 PM, PO Roman returned to the scene, exited the RMP [along with PO Sambrato and PO Fernandez], and removed the speaker to the RMP. PO Roman stated that he needed an ID and if one was not provided, then she, § 87(2)(b) and § 87(2)(b) would be arrested. § 87(2)(b) did not immediately provide identification, but after she gave PO Roman her NYS Benefit ID card, he asked whether the speaker belonged to her. Once § 87(2)(b) affirmed that it did, PO Roman asked her for her real name, address, and cellphone number, and informed her that she would be arrested if she did not provide the relevant information for each request. PO Roman did not inform § 87(2)(b) of the reason why she would be arrested (BR 05).

§ 87(2)(b)'s phone statement was obtained on July 17, 2017. On May 28, 2017, at approximately 8:00 PM, § 87(2)(b) went downstairs and outside of § 87(2)(b) in the Bronx to throw out her garbage. There were a lot of people hanging out outside at the time, which is typical in the area, but on the incident date many individuals were celebrating Dominican Mother's Day. § 87(2)(b) was outside and played music from a speaker that was located behind an unlocked gate of the building where trash is disposed. The music was not loud. Three officers arrived on the scene. An officer, identified via investigation as PO Roman, went straight towards the speakers and removed them. Many individuals in the area were arguing with him that he could not take the speakers. § 87(2)(b) was handed paperwork regarding the speakers. The officers then entered their patrol car and left the scene. § 87(2)(b) was unaware if the officers had come to the area prior to this interaction (BR 06).

PO Roman provided testimony on August 9, 2017. On May 28, 2017, he was headed northbound on § 87(2)(b) in the Bronx. At approximately 8:05 PM, he heard loud music playing that he estimated could be heard at least one block away.

§ 87(2)(b) PO Roman observed a speaker, from which the music played, on a pole next to § 87(2)(b) who sat in a chair next to the open, gated door of the building's waste disposal room. From the front passenger's seat of the RMP, PO Roman asked who the speaker belonged to and § 87(2)(b) confirmed that she was the owner. PO Roman warned § 87(2)(b) to either lower the volume of the music or place the speaker inside the building. § 87(2)(b) said okay, but PO Roman resumed patrol and did not note whether § 87(2)(b)

§ 87(2)(b) complied. Within 5 minutes, the officers drove past the § 87(2)(b) again. PO Roman observed § 87(2)(b) and the speaker in the same location, however the speaker remained at the same volume. The officers exited the RMP and PO Roman asked § 87(2)(b) for identification. PO Roman did not ask anyone else for identification and did not say anyone could be arrested if they did not provide identification. PO Roman asked § 87(2)(b) for identification. § 87(2)(b) asked why PO Roman needed it and what would happen if she did not have it. PO Roman explained to § 87(2)(b) that if she did not have identification, she would be brought back to the precinct stationhouse until her identity could be verified. § 87(2)(b) thought this meant she would be arrested and PO Roman clarified that she would not be charged with anything, and once her identity was confirmed, she would be issued a summons and released. PO Roman also informed § 87(2)(b) that she would have to be truthful about the spelling of her name and date of birth otherwise she could be charged with False Personation and arrested. PO Roman did not tell § 87(2)(b) that she could be arrested, or removed from the scene if she did not provide her address, phone number, or real name (BR 07).

PO Sambrato and PO Fernandez each provided testimony, on August 10, 2017, § 87(2)(g) in that they did not hear PO Roman inform any other civilian, besides § 87(2)(b) that they could be removed to the precinct stationhouse if they did not provide identification. PO Fernandez testified that § 87(2)(b) initially refused to provide identification by stating she did not have it. PO Roman informed her that if she did not have it, then the procedure is to return to the precinct stationhouse to prove her identity. PO Fernandez did not hear PO Roman discuss any other circumstances in which § 87(2)(b) could be removed to the stationhouse (BR 09). PO Sambrato § 87(2)(g) did not recall who explained to § 87(2)(b) that if she did not provide identification, then she would be brought back to the stationhouse for identification purposes (BR 08).

§ 87(2)(b) was issued a Criminal Court Summons for Disorderly Conduct - Unreasonable Noise (BR 13).

Patrol Guide Procedure 209-09 states that when issuing a summons returnable to the Traffic Violations Bureau or Criminal Court, a violator may be removed to command to investigate their identity if there is doubt concerning it (BR 11). New York State Penal Law § 190.23 states that a person is guilty of false personation when he or she knowingly misrepresents his or her actual name, date of birth, or address to a police officer with the intent of preventing such an officer from learning such information after being informed of the consequences of such act (BR 12). Patrol Guide Procedure 201-01 states a member of service may make an arrest without a warrant for a petty offense, violations or traffic infraction, in his/her presence if it is believed to have been committed within his/her geographical area of employment, and the arrest is made in the county of occurrence or an adjoining county (BR 17).

§ 87(2)(g) however, as mentioned in the Potential Issues section, § 87(2)(b) refused to participate in the investigation, and thus the investigation was unable to obtain a verified statement from her. In addition, § 87(2)(b) and § 87(2)(b) were unable to be reached. However, PO Roman does not dispute that he informed § 87(2)(b) that she could be arrested and removed to the stationhouse later during the incident.

§ 87(2)(g)  
However, PO Fernandez and PO Sambrato corroborated that § 87(2)(b)

§ 87(2)(b) did not declare ownership of the speaker until all three officers approached the civilians on foot. § 87(2)(g)

It is undisputed among the officers that after § 87(2)(b) did not initially provide identification, it was explained to her that she could be removed to the stationhouse solely for identification purposes. § 87(2)(g)

**Allegation B - Abuse of Authority: Police Officer Benjamin Roman seized § 87(2)(b)'s identification card.**

§ 87(2)(b) testified that after PO Roman stated he needed identification, she eventually produced her New York State Benefit ID card and gave it to PO Roman, who never returned it before he left the scene (BR 05).

§ 87(2)(b) stated over the phone that PO Roman did request documentation from § 87(2)(b) who provided a Medicaid card which she has yet to get back (BR 06).

PO Roman testified that he could not recall whether § 87(2)(b) ultimately produced identification or she verbally provided her name and they verified it in the audit system. PO Roman never learned that § 87(2)(b)'s NYS Benefit ID card was not returned to her and to his knowledge it was never in his possession (BR 07).

PO Sambrato testified that he could not recall who asked § 87(2)(b) for identification and whether § 87(2)(b) ultimately provided her name and date of birth verbally or she produced a form of identification. During his interview, PO Sambrato was shown a photograph of § 87(2)(b)'s new NYS Benefit ID card. PO Sambrato did not know whether he saw it or whether a card like it was ever in PO Roman's possession. PO Sambrato did not recall whether he ever learned a similar card was not returned to § 87(2)(b) (BR 08).

PO Fernandez testified that PO Roman asked § 87(2)(b) for identification and § 87(2)(b) initially refused, but ultimately complied and handed a form of identification to PO Sambrato. PO Fernandez did not know what type of ID card it was and did not know at what point § 87(2)(b)'s ID card may have been returned to her (BR 09).

§ 87(2)(b) provided a NYS Benefit ID card to verify her identity when she provided her testimony to the CCRB. The "Date Printed" on the card is § 87(2)(b), § 87(2)(b) days after the incident date and the ID Number is "§ 87(2)(b)" (BR 10).

A copy of the summons issued to § 87(2)(b) notes "§ 87(2)(b) under ID License Number (BR 13). The Property Clerk Invoice prepared for this incident notes two items: a speaker and wires (BR 15). PO Roman's memo book entry does not contain any information regarding being in possession of § 87(2)(b)'s ID (BR 16).

The investigation does not have video evidence.

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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Squad: **6**

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date